

FIRST REGULAR SESSION

SENATE BILL NO. 470

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time February 28, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1780S.02I

AN ACT

To amend chapter 319, RSMo, by adding thereto fourteen new sections relating to the blasting and excavation, with penalty provisions and an expiration date for a certain section.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 319, RSMo, is amended by adding thereto fourteen new sections, to be known as sections 319.300, 319.303, 319.306, 319.309, 319.312, 319.315, 319.318, 319.321, 319.324, 319.327, 319.330, 319.333, 319.336, and 319.339, to read as follows:

319.300. Sections 319.300 to 319.339 shall be known as the "Missouri Blasting Safety Act". The purpose of sections 319.300 to 319.339 shall be to foster the safe use of explosives in mining and construction by establishing and enforcing consistent statewide industry standards for licensing of blasters and persons using explosives. The provisions of sections 319.300 to 319.339 or any rules or regulations promulgated thereunder shall not be construed to amend, supersede, or conflict with any requirement of federal law or regulation governing the manufacturing, transporting, or storage of explosives.

319.303. As used in sections 319.300 to 319.339, the following terms shall mean:

(1) "Blaster", a person qualified to be in charge of and responsible for the loading and firing of an explosive or explosive material;

(2) "Bore hole", a hole made with a drill, auger, or other tool in which explosives are placed in preparation for detonation;

(3) "Blast", detonation of explosives;

(4) "Blasting", the use of explosives in mining or construction;

(5) "Blast site", the area where explosives are handled during loading of a bore hole, including fifty feet in all directions from the perimeter formed by loaded holes. A minimum of thirty feet may replace the fifty feet requirement if the

perimeter of loaded holes is marked and separated from nonblast site areas by a barrier. The fifty feet or thirty feet distance requirements, as applicable, shall apply in all directions along the full depth of the bore hole. In underground mines, at least fifteen feet of a solid rib, pillar, or broken rock can be substituted for the fifty foot distance;

(6) "Board", the state blasting safety board created in section 319.324;

(7) "Burden", the distance from an explosive charge to the nearest free or open face at the time of detonation;

(8) "Deck", charge of explosives separated from other charges by stemming;

(9) "Delay period", the time delay provided by blasting caps which permits firing of bore holes in sequence;

(10) "Detonation", the action of converting the chemicals in an explosive charge to gases at a high pressure by means of a self-propagating shock wave passing through the charge;

(11) "Detonator", any device containing initiating or primary explosive that is used for initiating detonation of another explosive material. A detonator may not contain more than ten grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuse, detonating cord delay connectors, and non-electric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires;

(12) "Explosives", any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters; includes explosive materials such as any blasting agent, emulsion explosive, water gel, or detonator. Explosive materials determined to be within the coverage of sections 319.300 to 319.339 shall include all such materials listed in 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution, and Storage of Explosive Materials, as issued at least annually by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

(13) "Firing", causing explosives to be detonated by the use of a fuse or electric detonator;

(14) "Fugitive from justice", any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term shall also include any person who has been convicted of any crime and has fled to avoid case disposition;

(15) "Initiation system", components of an explosive charge that cause the charge to detonate, such as primers, electric detonators, and detonating charge;

(16) "Loading", placing of explosives in a hole in preparation for detonation;

(17) "Local government", a city, county, fire district, or other political subdivision of the state;

(18) "Person", any individual, proprietorship, partnership, firm, corporation, company, joint venture, association, teaching institution, municipality, county, political subdivision, or department, board, commission, institution, or agency of the state of Missouri;

(19) "Person using explosives", any business, company, or other person that is required to hold authority to receive or use explosives under statutes or regulations administered by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives or who employs blasters as required to be licensed by section 319.306;

(20) "Regulatory authority", the Missouri division of fire safety, office of the state fire marshal;

(21) "Scaled distance", the linear distance, in feet, from the blast to a specified location, divided by the square root of the maximum weight of explosives, in pounds, to be detonated in any eight millisecond period;

(22) "Seismograph", an instrument that measures ground vibration and acoustic effects;

(23) "Spacing", the distance between adjacent bore holes;

(24) "Stemming", inert material that is placed above explosives that have been placed in a blast hole in preparation for detonation or vertically between columnar decks of explosives that have been placed in a hole in preparation for detonation;

(25) "Uncontrolled structure", any dwelling, public building, school, church, commercial building, institutional building, underground pipeline, or water well that is not owned or leased by the person using explosives, or otherwise under the direct contractual responsibility of the person using explosives.

319.306. 1. Any individual who uses explosives in Missouri shall obtain a blaster's license, except those exempted in sections 319.300 to 319.339. A company, business or other person defined as a "person using explosives" shall not be required to hold a blaster's license, but all blasting on behalf of such company, business, or other person as governed by sections 319.300 to 319.339 shall be performed only by licensed blasters. Applications for a blaster's license or renewal of a blaster's license shall be on a form designated by the Missouri division of fire safety, but may obtain only the following:

- (1) The applicant's full name;
- (2) The applicant's date of birth;
- (3) The applicant's sex;
- (4) The applicant's physical description;
- (5) The applicant's social security number;
- (6) The applicant's drivers license number;
- (7) The applicant's current place of employment;
- (8) A listing of any other blasting license or certification held by the applicant, to include the name, address, and phone number of the regulatory authority that issued the license or certification;
- (9) Any other information required to fulfill the obligations of sections 319.300 to 319.339.

2. Any individual who has met the qualifications set forth in subsection 4 of this section may apply for a blaster's license.

3. An applicant for a blaster's license shall submit an application fee with the application submitted to the division of fire safety. The amount of such fee shall be established by rule promulgated by the division of fire safety under rulemaking authority established in section 319.327. The fee established by rule shall be no greater than the cost of administering this section, but shall not exceed one hundred dollars.

4. Any applicant for a blaster's license shall meet the following qualifications:

- (1) Is at least twenty-one years of age;
- (2) Has not willfully violated any provisions of sections 319.300 to 319.339;
- (3) Has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive in connection with the application;
- (4) Has familiarity and understanding of relevant federal and state laws relating to explosives materials;
- (5) Has not been convicted in any court of, or plead guilty to, a felony;
- (6) Is not a fugitive from justice;
- (7) Is not an unlawful user of or addicted to marijuana, or any depressant or stimulant drug, or narcotic drugs, or alcohol;
- (8) Except as provided in subsection 11 of this section, has completed an approved blaster's training course that meets the requirements of subdivision (1) of subsection 12 of this section and has successfully passed the certification examination under the provisions of subdivisions (1) to (5) of subsection 13 of this section;

(9) Has two years or two thousand hours of experience directly relating to the use of explosives and shall provide signed documentation from an employer, supervisor, or other responsible party verifying the applicant's experience;

(10) Has not been adjudicated as mentally defective; and

(11) Is a citizen of the United States and does not advocate or knowingly belong to any organization or group that advocates violent action against any federal, state, or local government, or against any person.

Any individual holding a blaster's license under the provisions of this section shall promptly notify the division of fire safety if he or she has had any change of material fact relating to these qualifications of holding a blaster's license.

5. If the division of fire safety finds that the requirements for a blaster's license have been satisfied, such a license shall be issued to the applicant.

6. A blaster's license shall expire three years from the date of issuance. To qualify for a renewal of a blaster's license, an individual will be required to provide documentation of completing eight hours of training in an explosives-related course of instruction that is approved by the division of fire safety. Such training for renewal of the license shall be acquired at any time during the three-year period that a license is valid. Additional training beyond an accumulated eight hours during any three-year period is not valid for more than one subsequent renewal of the license.

7. Each license issued under the provision of this section shall provide documentation to the license holder in the form of a letter or letter-sized certificate and a card that is approximately two inches by three inches in size. Each shall specify a unique license number, the name of the individual, his or her driver's license number, the blaster's license's effective date and its expiration date, and any other record-keeping information needed by the division of fire safety.

8. Each individual required to have a blaster's license shall provide documentation that he or she has a currently valid license to a representative of the division of fire safety within two business days of a written or verbal request. No enforcement action shall be taken against any individual that cannot comply with such as request so long as the division of fire safety's records provide documentation that the individual has a valid blaster's license.

9. (1) A blaster's license issued under the provisions of this section may be suspended or revoked upon substantial proof that the individual holding the license has:

(a) Knowingly failed to monitor the use of explosives as provided in section 319.309;

(b) Negligently or habitually exceeded the limits established under section 319.312;

(c) Knowingly or habitually failed to create a record of blasts as required by section 319.315;

(d) Had a change in material fact relating to their qualifications for holding a blaster's license as described in subsection 4 of this section;

(e) Failed to advise the division of fire safety of any change of material fact relating to his or her qualification of holding a blaster's license; or

(f) Knowingly made a material misrepresentation of any information by any means of false pretense, deception, fraud, misrepresentation, or cheating for the purpose of obtaining training or otherwise meeting the qualifications of obtaining a license.

(2) The division of fire safety shall provide any notice of suspension or revocation, as provided in subdivision (1) of this subsection in writing sent by certified mail to the last known address of the holder of the license. The notice may also be verbal, but this does not eliminate the requirement for written notice. Upon receipt of a verbal or written notice of suspension or revocation from the division of fire safety, the person holding the license shall immediately surrender all copies of the license to a representative of the division of fire safety and shall immediately cease all blasting activity.

(3) The person holding the license may appeal any suspension or revocation to the state blasting safety board established under section 319.324 within forty-five days of the date written notice was received. The division of fire safety shall immediately notify the chairman of the board that an appeal has been received and an informal hearing shall be held. The board shall consider and make a decision on any appeal received by the division of fire safety within thirty days of the date the appeal is received by the division of fire safety. The board shall make a decision on the appeal by majority vote of the board and shall immediately notify the appellant of its decision in writing. The written statement of the board's decision shall be prepared by the division of fire safety or its designee and shall be approved by the chairman of the board. The approved statement of the board's decision shall be sent by certified mail to the last known address of the holder of the license.

10. Any person whose license has been expired for a period of three years or less shall be required to successfully pass the examination as provided in subdivisions (1) to (5) of subsection 13 of this section and attend the eight hours of training required for renewal of a license as minimum qualifications for submitting an application for re-instatement of the license. Any person whose

license has been expired for a period of more than three years shall meet the qualifications set forth in subsection 4 of this section, including completing twenty hours of training and passing the examination, prior to applying for a blaster's license.

11. License reciprocity may be granted to applicants that within the last three years have held a valid license or certification from any other source if all of the qualifications for obtaining the license or certification meets or exceeds the provisions of this section. It is the duty of the division of fire safety to investigate the qualifications required for obtaining a license or certification that is listed on a completed application on which the applicant is attempting to obtain a license issued by the division of fire safety.

12. (1) The division of fire safety or its authorized agent shall offer at least two courses of instruction annually that fulfill the training requirement of qualifying for a blaster's license and renewal of a blaster's license. In addition, any person may apply to the division of fire safety for approval of a course of instruction that meets the training requirement of obtaining a blaster's license or renewal of a blaster's license. The application shall include a description of the qualifications of the instructor, a description of instructional materials to be used in the course, and an outline of the subject matter to be taught, including minimum hours of instruction on each topic. The division of fire safety shall review the application regarding the knowledge and experience of proposed instructors, the total hours of training and the adequacy of proposed training in subject matter with regard to the provisions of sections 319.300 to 319.339. If the division of fire safety determines that training proposed by the applicant is adequate, a letter of approval shall be issued to the applicant. The letter of approval shall be effective for a period of three years. If at any time the division of fire safety determines that an approved training course no longer meets the standards of this section, the letter of approval may be revoked with written notice.

(2) To be approved by the division of fire safety, a blaster's training course shall contain at least twenty hours of instruction to prepare attendees for obtaining a blaster's license the first time, or eight hours of instruction to prepare attendees for obtaining a license renewal. The topics to be included in the training course and the time devoted to each topic shall be established by regulation.

(3) Any person providing training in a course of instruction approved by the division of fire safety shall submit a list of individuals that attended any such course to the division of fire safety within ten working days after completion of the course.

(4) The division of fire safety shall maintain a current list of persons who provide approved training and shall make this list available by any reasonable means to professional and trade associations, labor organizations, universities, vocational schools, and others upon request.

13. (1) The division of fire safety shall approve a standard examination or examinations for the purpose of qualifying an individual to obtain a blaster's license. Each individual taking the examination shall pay a fee to the division of fire safety, or the division's agent, that is established by regulation. Testing fees shall not exceed fifty dollars per test, and shall be no greater than what is required to administer the testing provisions of this section.

(2) Except as provided in subsection 10 of this section, no individual shall be allowed to take an examination for purposes of obtaining a blaster's license unless that individual has completed a training course approved by the division of fire safety. The individual must have completed an approved course of instruction as provided in subdivision (1) of subsection 12 of this section no longer than three years prior to taking the examination. The examination may be administered by any person approved to provide a course of instruction, as provided in subdivision (1) of subsection 12 of this section, at the site of instruction, or by the division of fire safety under the supervision of the state fire marshal or his or her designee.

(3) Standards for passing the examination shall be set by the division of fire safety by rule.

(4) The division of fire safety or its authorized agent shall provide a written statement within thirty days to the individual taking the examination as to whether that individual passed or failed.

(5) Any individual failing to pass the examination may retake the examination within six months without having to complete an additional approved course of instruction. If the individual fails the second examination, the person must complete another course of instruction as required in subdivision (1) of subsection 12 of this section before taking the examination again. No limit will be placed on how many times any individual may take the examination, subject to the provisions of this subdivision of this subsection.

(6) Individuals having previously taken an approved course, and passed an approved examination, and having taken an approved refresher training course, or that have obtained a blaster's license as provided in subsection 11 of this section are eligible for renewal of a blaster's license after meeting the requirements of subsection 6 of this section. The fee for renewal of a license shall be the same as the fee specified in subsection 3 of this section.

14. No individual shall load or fire explosives or direct, order, or otherwise cause any individual to load or fire explosives in this state unless that individual has a valid blaster's license or is under the direct supervision and responsibility of an individual having a valid blaster's license. An individual without a blaster's license that is loading or firing explosives while under the direct supervision and responsibility of someone having a blaster's license shall not be in violation of sections 319.300 to 319.339.

15. Persons found guilty of loading or firing explosives, or directing, ordering, or otherwise causing any individual to load or fire explosives in this state without having a valid blaster's license, or that loads and fires explosives without being under the direct supervision and responsibility of an individual holding a blaster's license as provided in sections 319.300 to 319.339, shall be guilty of a class C misdemeanor for the first offense, a class B misdemeanor for the second offense, or a class A misdemeanor for the third offense. Any individual convicted of a class A misdemeanor under the provisions of sections 319.300 to 319.339 shall be permanently prohibited from obtaining a blaster's license in this state.

16. The requirement for obtaining a blaster's license shall not apply to:

(1) Individuals employed by universities, colleges, or trade schools when the use of explosives is confined to instruction or research;

(2) Individuals using explosives materials in the forms prescribed by the official U.S. Pharmacopoeia or the National Formulary and used in medicines and medicinal agents;

(3) Individuals conducting training or emergency operations of any federal, state, or local government including all departments, agencies, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties or functions;

(4) Individuals using explosives that are members of the armed forces or any military unit of Missouri or the United States;

(5) Individuals using pyrotechnics, commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes;

(6) Individuals using small arms ammunition and components thereof which are subject to the Gun Control Act of 1968, Title 18, Chapter 44 U.S.C., and regulations promulgated thereunder;

(7) Any individual performing duties regulated by 30 CFR Part 48, Subpart A and 30 CFR Part 57 of the Code of Federal Regulations, as amended, or using explosives within an industrial furnace;

(8) Any individual having a valid blaster's license or certificate issued under

the provisions of any requirement of the U.S. government in which the requirements for obtaining the license or certificate meet or exceed the requirements of sections 319.300 to 319.339;

(9) Individuals using agricultural fertilizers when used for agricultural or horticultural purposes;

(10) Individuals handling explosives while in the act of transporting them from one location to another;

(11) Individuals assisting or training under the direct supervision of a licensed blaster;

(12) Individuals handling explosives while engaged in the process of explosives manufacturing;

(13) Employees, agents, or contractors of rural electric cooperatives organized or operating under chapter 394, RSMo.

17. The provisions of this section shall become effective August 28, 2006.

319.309. 1. Any person using explosives in the state of Missouri shall calculate the scaled distance to the nearest uncontrolled structure. If more than one uncontrolled structure is the same approximate distance from the blast site, then the person using explosives may select one representative structure for calculation of scaled distance.

2. For the purposes of this section, the term uncontrolled structure shall not apply to the following:

(1) Buildings in a state of disrepair or neglect which are not being used as a permanent residence;

(2) Noncommercial storage sheds;

(3) Temporary structures;

(4) Any mobile recreational vehicle, trailer, or camper;

(5) Agricultural barns, storage sheds, and animal shelters;

(6) Any building on mine property that is owned by the mine operator or contained on property leased by the mine operator.

3. In any instance when the scaled distance value is fifty-five or less, any person using explosives, except as provided in 319.321, shall use at least one seismograph to record the ground vibration and acoustic levels that occur from the use of such explosives or explosive materials. When measuring ground vibration and acoustic levels, the seismograph shall be placed in the proximity of the nearest uncontrolled structure or, at the option of the person using explosives, closer to the blast site. If more than one uncontrolled structure is the same approximate distance from the blast site, then the person using explosives may select one representative structure for placement of the seismograph.

4. If blasting is conducted in the same proximity on a regular, routine, and ongoing basis and consecutive blast sites are adjacent to each other, then seismograph recordings are only required for every third blast, provided the scaled distance of the blasts in which seismographs are not used is equal to or greater than the blasts in which a seismograph was most recently used. If seismograph recordings are taken every third blast, the person using explosives must still meet the requirements of subsections 2 and 3 of section 319.315 for each blast.

5. Any person voluntarily using a calibrated seismograph for all blasting is exempt from the requirements of this section.

319.312. 1. (1) Any person using explosives in the state of Missouri in which monitoring with a seismograph is required, as provided in section 319.309, shall comply with ground vibration limits based on the U.S. Bureau of Mines Report of Investigations 8507, Appendix B.

(2) In lieu of the ground vibration limit established in subdivision (1) of this subsection, the person using explosives may submit a written request to the division of fire safety to use an alternate compliance method. Such written request must be supported by sufficient technical information, which may include but not limited to, documented approval of such method by other federal, state, or local political subdivisions which regulates the use of explosives. Upon submittal by the person using explosives of a request to use an alternate compliance method, the division of fire safety shall issue a written determination as to whether the technical information submitted provides sufficient justification for the alternate method to be used as a method of demonstrating compliance with the provisions of this section.

2. Any person using explosives in the state of Missouri in which monitoring with a seismograph is required, as provided in section 319.309, shall limit acoustic values to one hundred thirty-three decibels using a two hertz flat response measuring system based on the Office of Surface Mining regulation 816.67(b)(I).

319.315. 1. Seismograph recordings of the ground vibration and acoustic levels created by the use of explosives, when required by section 319.309, shall be retained for at least three years. Such recordings shall be made available to the division of fire safety within twenty-four hours of a request by any representative of the division of fire safety. Each seismograph recording and the accompanying records shall include the:

(1) Maximum ground vibration and acoustics levels recorded;

(2) Specific location of the seismograph equipment, its distance from the detonation of the explosives, the date of the recording, and the time of the

recording;

(3) Name of the individual responsible for operation of the seismograph equipment and performing an analysis of each recording;

(4) Type of seismograph instrument, its sensitivity and calibration signal or certification date of the last calibration.

2. When seismograph recordings of the use of explosives are required by section 319.309, a record of each such use of explosives shall be made and retained for at least three years. The record shall be completed by the end of the work day following the day in which the explosives were detonated. Such records shall be made available to the division of fire safety, upon request, within twenty-four hours of the request. Each record shall include the:

(1) Name of the person using the explosives;

(2) Location, date, and time of the detonation;

(3) Name of the licensed blaster responsible for use of the explosives;

(4) Type of material blasted;

(5) Number of bore holes, burden, and spacing;

(6) Diameter and depth of bore holes;

(7) Type of explosives used;

(8) Weight of explosives used per bore hole and total weight of explosives used;

(9) Maximum weight of explosives detonated with any eight millisecond period;

(10) Maximum number of bore holes or decks detonated within any eight millisecond period;

(11) Initiation system, including number of circuits and the timer interval, if a sequential timer is used;

(12) Type and length of stemming;

(13) Type of detonator and delay periods used, in milliseconds;

(14) Sketch of delay pattern, including decking;

(15) Distance and scaled distance, if required under the provisions of 319.309, to the nearest controlled structure;

(16) Location of the nearest controlled structure, using the best available information.

3. It shall be the duty of each licensed blaster and each person using explosives to assure that the requirements of this section are met. Any person using explosives as defined in section 319.303 shall provide properly calibrated seismographic equipment at the closest practical proximity to the nearest uncontrolled structure, or at the option of the person using explosives the

seismograph equipment may be located nearer to the blast site on an approximate line between the nearest uncontrolled structure and the blast site. Licensed blasters shall create the required record in subsection 2 of this section and provide such record to the person using explosives, who shall be responsible for maintaining records required in this section.

319.318. 1. Any person using explosives shall comply with the provisions of this section.

2. Provisions of federal law and regulation regarding the manufacturing, transportation, distribution, and storage of explosives shall be enforced by the appropriate federal agency and shall not be the subject of state enforcement.

3. Within sixty days after the effective date of sections 319.300 to 319.339, each person using explosives or intending to use explosives in Missouri shall register with the state fire marshal. Any person not required to register on the effective date, who subsequently uses explosives in Missouri, shall register with the state fire marshal within thirty days after first using explosives in Missouri. The initial registration shall state the name of the person, address, telephone number, facsimile number, e-mail address, and name of the principal individual having responsibility for supervision of the use of explosives. A fee of one hundred dollars shall be submitted with the initial registration.

4. Each person using explosives that is required to register under subsection 3 of this section shall by January 31 of each year after registering, file an annual report with the state fire marshal for the preceding calendar year.

(1) The annual report shall state any material change or addition to the information stated in the report required by subsection 3 of this section.

(2) The initial annual report shall only include that portion of the preceding calendar year after the date the person became subject to the requirement to register under subsection 3 of this section.

(3) The report shall include:

(a) The name and address of the explosives distributors from which explosives were purchased;

(b) The total number of pounds of explosives purchased during the period required to be covered by the report. For persons who purchase explosives for use in multiple states, the report need only state the total number of pounds which were delivered for use in Missouri. Persons required to annually report shall maintain records sufficient to prove the accuracy of the information reported.

(4) The person shall submit with the annual report a fee per ton, as established under section 319.318, based on the amount of explosives reported. If the report of total pounds purchased results in a portion of a ton, the cumulative

total of the fee shall be rounded to the nearest ton. The minimum total fee submitted by any person required to annually report shall be fifty dollars. The maximum total fee submitted by any person required to annually report shall be two thousand five hundred dollars.

5. (1) The state fire marshal may audit the records of any person required to annually report under subsection 4 of this section to determine the accuracy of the number of pounds of explosives reported. In connection with such audit, the state fire marshal may also require any distributor of explosives to provide a statement of sales during the year to persons required to report under subsection 4 of this section.

(2) It shall be a violation of sections 319.300 to 319.319 to knowingly report false information in the reports required under subsections 3 and 4 of this section. The state fire marshal may issue a notice of violation for reporting false information. The notice of violation shall be subject to the same procedures and rights of appeal as established in sections 319.324, 319.327, and 319.333. Upon conviction for knowingly filing a false report, the person shall be subject to a penalty as a class B misdemeanor. Conviction upon a second or subsequent offense shall be subject to penalty as a class A misdemeanor.

6. It shall also be a violation of sections 319.300 to 319.339 for any person using explosives to:

(1) Engage in blasting other than by a licensed blaster or an individual working under the direct supervision of a licensed blaster;

(2) Fail to calculate the scaled distance, conduct monitoring of vibration and noise levels, and conduct record keeping as required by sections 319.300 to 319.339.

7. Upon a conviction or guilty plea to violation of subsection 5 of this section, the person shall be subject to a penalty as a class B misdemeanor upon the first offense, and upon a second or subsequent offense, the person shall be subject to a penalty as a class A misdemeanor as provided in subsection 1 of section 560.021, RSMo.

319.321. Sections 319.309, 319.312, 319.315, and 319.318 shall not apply to:

(1) Universities, colleges, or trade schools when confined to the purpose of instruction or research;

(2) The use of explosive materials in the forms prescribed by the official U.S. Pharmacopoeia or the National Formulary and used in medicines and medicinal agents;

(3) The training or emergency operations of any federal, state, or local government including all departments, agencies, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their

duties or functions;

(4) The use of explosives by the military or any agency of the United States;

(5) The use of pyrotechnics, commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes;

(6) The use of small arms ammunition and components thereof which are subject to the Gun Control Act of 1968, Title 18, Chapter 44, U.S.C., and regulations promulgated thereunder. Any small arms ammunition and components thereof exempted by the Gun Control Act of 1968 and regulations promulgated thereunder are also exempted from the provisions of sections 319.300 to 319.339;

(7) Any person performing duties regulated by 30 CFR Part 48, Subpart A and 30 CFR Part 57 of the Code of Federal Regulations, as amended, or using explosives within an industrial furnace;

(8) The use of agricultural fertilizers when used for agricultural or horticultural purposes;

(9) The use of explosives for demolition of structures;

(10) The use of explosives by employees, agents, or contractors of rural electric cooperatives organized or operating under chapter 394, RSMo.

319.324. 1. A state blasting safety board is hereby created and assigned to the division of fire safety under the state fire marshal. There shall be seven members of this board, as appointed by the governor, to be comprised of:

(1) One representative of a person using explosives that is engaged in underground mining;

(2) One representative of a person using explosives that is engaged in surface mining;

(3) One representative of a person using explosives that is engaged in construction;

(4) One representative of a person that is in the business of providing contract blast monitoring services;

(5) Two representatives of persons that manufacture or distribute explosives; and

(6) The state fire marshal or his or her designee.

2. Each board member shall serve for a term of six years, except for the members initially appointed one term shall be for one year, one term shall be for two years, one term shall be for three years, one term shall be for four years, one term shall be for five years, and one term shall be for six years. Members appointed and serving shall serve until their successor is named and shall be eligible for reappointment. The state fire marshal or his or her designee shall be a standing member of the board and shall have the power to vote.

3. Members of the board shall serve without compensation but may be reimbursed by the division of fire safety for reasonable and necessary expenses. Meetings of the board shall be held in facilities arranged for by the division of fire safety. Hearings under the duties of the board may be held at a location in Missouri agreed upon by the state fire marshal and the chairman of the board. Upon agreement by the appellant, the state fire marshal, and the chairman of the state blasting safety board, hearings may be conducted by conference call.

4. The board shall annually by January 31 elect a chairman from one of the persons other than the state fire marshal or his or her designee. The chairman shall be elected by majority vote of the board and shall preside over all meetings and hearings and perform any specific duties set out in sections 319.300 to 319.339.

5. The state fire marshal or his or her designee shall perform the duties of secretary of the board.

6. The board shall meet as needed at the call of the chairman or upon written notice by the state fire marshal. The board shall meet at least once each calendar year.

7. It shall be the duty of the board to:

(1) Advise the state fire marshal in the development of application and registration forms, training and examinations, and setting fees for the filing of required applications, registrations, and reports;

(2) Approve or disapprove any examination for licensing of blasters;

(3) Hold hearings and make decisions by majority vote upon appeals of revocation or suspension of blaster's licenses, notices of violation, and orders of cessation of the use of explosives;

(4) Approve or disapprove the state fire marshal's referral of a violation of sections 319.300 to 319.339 to the appropriate prosecuting attorney or the attorney general for enforcement action;

(5) Approve or disapprove any rule proposed by the division of fire safety for administration or enforcement of sections 319.300 to 319.339;

(6) Advise or assist the division of fire safety in any other matter regarding administration or enforcement, within the scope and requirements of section 319.300 to 319.339.

319.327. It shall be the duty of the division of fire safety to:

(1) Develop and distribute all forms, certificates, and printed material necessary for carrying out duties relating to applications, registrations, training, testing, and licensing required by sections 319.300 to 319.339.

(2) Publish, distribute, and administer an examination that tests the knowledge of applicants for a blaster's license in the safe and proper use of

explosives. The examination may be given to applicants by representatives of the division of fire safety, persons approved by division of fire safety to provide training under section 319.306, or by other persons designated by the division of fire safety.

(3) Upon approval by majority vote of the state blasting safety board, promulgate any rule necessary for carrying out the purposes of sections 319.300 to 319.339. No rule promulgated by the state fire marshal shall duplicate, amend, supersede, or conflict with the provisions of any statute, regulation, or policy established by:

(a) The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

(b) 18 U.S.C., Chapter 40, Importation, Manufacturing, Distribution and Storage of Explosive Materials;

(4) Investigate possible violations of sections 319.300 to 319.339 upon the complaint of any citizen that believes explosives are being used in such a way to endanger the public's safety or property, or upon any cause for the state fire marshal to believe that a violation is occurring. The state fire marshal shall appoint adequately trained personnel within the division of fire safety to inspect blasting sites, examine records and seismograph recordings, inspect blaster's licenses, inspect registration and reporting records required by section 319.315, or determine if any other provision of sections 319.300 to 319.339 has been violated. Such inspectors shall be employees of the division of fire safety and may act on a full-time or part-time basis. Any such inspector shall have passed the examination required of licensed blasters under section 319.306.

(5) Upon approval by majority vote of the state blasting safety board, refer any violation of sections 319.300 to 319.339 to the appropriate prosecuting attorney or the attorney general of Missouri for enforcement action.

(6) Receive and provide information and assistance, in cooperation with local governments, federal agencies, and agencies of other states, in administration and enforcement of sections 319.300 to 319.339 and similar laws, regulations, and requirements in other jurisdictions.

319.330. There is hereby created in the state treasury for use by the division of fire safety in administration and enforcement of sections 319.300 to 319.339, a fund to be known as the "Missouri Explosives Safety Act Administration Fund". All fees collected under sections 319.300 to 319.339, appropriations of the general assembly, federal grants, private donations, and any other moneys designated for duties established under sections 319.300 to 319.339 shall be deposited in the fund. Moneys deposited in the fund shall be expended under the direction of the

state fire marshal for administration and enforcement of sections 319.300 to 319.339. Such funds shall not be expended for salaries or administrative expenses relating to any other duty of the division of fire safety. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any unexpended balance in the Missouri explosives safety act administration fund at the end of any biennium shall not be transferred to the general revenue fund. All interest earned from moneys in the fund shall be credited to such fund. The state fire marshal shall submit a report to the state blasting safety board and the public each year that describes the revenue created by fees established under the provisions of sections 319.300 to 319.339 and how the revenue was expended to enforce the provisions of sections 319.300 to 319.339, including the number of employees used and activities performed.

319.333. Any person the state fire marshal or his or her representative determines, upon substantial evidence, to be in violation of sections 319.300 to 319.339 may be issued a notice of violation by the division of fire safety. The notice of violation shall be in writing and shall state the section or sections violated and the circumstance of the violation, including date, place, person involved, and the act or omission constituting the violation. The notice shall also inform the person receiving the notice of the right to request a hearing before the state blasting safety board. The recipient may request a hearing within forty-five days of the date the notice was received. If a hearing is requested, the state fire marshal shall immediately inform the chairman of the board. The person receiving the notice, the state fire marshal, and the chairman of the board shall establish a mutually acceptable date and place for the hearing, which in no case shall be more than thirty days after the hearing was requested. The hearing shall be conducted as an uncontested case, although the appellant or the state fire marshal may be represented by an attorney. Within fifteen days of such hearing, the board shall notify the appellant of its decision on the appeal, which may include upholding, modifying, or disapproving the notice of violation. The board's action upon the appeal shall be decided by majority vote. If the notice of violation is upheld by the board, in whole or part, upon a separate majority vote of the board, the person may be referred for enforcement action as provided in section 319.327.

319.336. Any person aggrieved by any official action of the state blasting safety board affecting their licensed status, including revocation, suspension, failure to renew, or refusal to grant a license may seek a determination thereon by the administrative hearing commission under the provisions of section 621.045, RSMo.

319.339. 1. Any person using explosives which will conduct blasting within

the jurisdiction of a municipality shall notify the appropriate representative of the municipality in writing or by telephone at least twenty-four hours in advance of blasting at that location. An appropriate representative shall be deemed to be the city's fire department or public works department, or an official at the city hall or office maintained by the city. The notice required by this section shall state the name, address, and telephone number of the person using explosives, the name of the individual responsible for supervision of blasting, the date or approximate period over which blasting will be conducted, the location of blasting by street address, route, or other description, and the nature of the project or reason for blasting. If blasting will be conducted at an ongoing project, such as a long term construction project, or at a permanent site, such as an underground or surface mine, the person shall only be required to make one notice to the local government in advance of the first use of explosives. Any such ongoing projects or permanent sites in existence at the time of the effective date of sections 319.300 to 319.339 shall not be required to provide notice as described in this subsection.

2. Any municipality or authorized representative of a municipality may:

(1) Require any person engaged in blasting to show proof that blasting is being conducted by an individual that is licensed under the provisions of section 319.306;

(2) Request and shall be allowed access to the site of blasting by the person using explosives and shall be allowed to observe blasting from a safe location as designated by the blaster;

(3) Specify the hours of the day during which blasting may be conducted, provided that the hours specified allow a total time span of not less than six consecutive hours per day;

(4) Examine records of blasting required to be maintained by sections 319.309 and 319.315. However, no municipality shall require a person using explosives or a blaster to surrender such records or a copy of such records to the municipality;

(5) Report suspected violations of sections 319.300 to 319.339 to the state fire marshal.

3. Subsections 1 and 2 of this section shall not apply to any blasting required by a contract with any agency of the state of Missouri, any federal agency, or any political subdivision.

4. The state of Missouri hereby preempts existing regulation, licensing, and inspection of persons using explosives, blasters, and blasting by local governments or other political subdivisions, except as authorized in this section. It shall be unlawful for any local government or other political subdivision to impose any

future ordinance, order, permit or regulation upon persons using explosives or blasters which duplicates, exceeds or conflicts with the requirements of sections 319.300 to 319.339.

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